

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FEB 12 1976

FILE: B-166506

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MATTER OF: Environmental Protection Agency -- funding of conferences.

- DIGEST: 1. Decision B-166506, July 15, 1975, holding payment by Environmental Protection Agency of transportation and lodging expenses of State officials attending National Solid Waste Management Association Convention is prohibited by 31 U.S.C. § 551, unless otherwise authorized by statute, is affirmed. Provision of Administrative Expenses Act (5 U.S.C. § 5703(c)), permitting payment of such expenses for persons serving the Government without compensation does not provide necessary exception to 31 U.S.C. § 551 since attendees at conference are not providing a direct service to the Government and are therefore not covered by 5 U.S.C. § 5703(c).
2. Proposed lump-sum grant by Environmental Protection Agency (EPA) to American Law Institute to provide scholarships to defray transportation, food, and lodging expenses at environmental law seminar does not violate 31 U.S.C. § 551 which prohibits use of appropriated funds to pay expenses of conventions or gatherings without specific authority since expenditures of properly authorized grant funds are not subject to restrictions upon the direct expenditure of appropriations.

This decision to the Administrator, United States Environmental Protection Agency (EPA), is in response to two requests for reconsideration or modification of our decision of July 15, 1975, B-166506, which held that payment by EPA of transportation and lodging expenses for 87 State officials at the National Solid Waste Management Association Convention held in San Francisco on November 13-16, 1974, violated 31 U.S.C. § 551 (1970), set forth below:

"Unless specifically provided by law, no moneys from funds appropriated for any purpose shall be used for the purpose of lodging, feeding, conveying, or furnishing transportation to, any conventions or other form of assemblage or gathering to be held in the

District of Columbia or elsewhere. This section shall not be construed to prohibit the payment of expenses of any officer or employee of the Government in the discharge of his official duties."

EPA had sponsored the convention jointly with the Association, a non-Government organization, and had charged the payment to its Office of Solid Waste Management Program travel funds. Payment was made directly to the individual attendees upon the submission of vouchers.

On October 3, 1975, the EPA Administrator asked us to reconsider our July 15 decision in light of 5 U.S.C. § 5703(c) (1970). Section 5703(c) provides in pertinent part:

"An individual serving without pay or at \$1 a year may be allowed transportation expenses under this subchapter and a per diem allowance under this section while en route and at his place of service or employment away from his home or regular place of business. * * *"

Relying on 27 Comp. Gen. 183 (1947) and 39 Comp. Gen. 55 (1959), EPA urges that the State officials attending the Solid Waste Management Convention be deemed individuals serving without pay for purposes of section 5703(c). EPA's argument is set forth in the following paragraphs from its October 3 letter:

"If, as seems well-settled, 5 USC 5703(c) authorizes payment of travel and per diem to persons requested to travel on official government business, it would seem that the legality of such payments depends upon whether the travel is in fact official, that is, whether an activity is within an agency's statutory charter, and not upon whether a 'conference' occurs at the traveler's destination.

"Since 42 USC 3253 directs EPA to 'encourage, cooperate with, and render financial and other assistance to appropriate (agencies and individuals)' in connection with solid waste disposal programs, and 42 USC 3254 directs the Agency to encourage the enactment of uniform state and local laws, it would seem that a conference directed towards these ends would be official Agency business. * * *

"The number of participants invited to such a conference would not seem relevant to a determination as to its legality.

We likewise perceive no useful distinction between bringing participants to an EPA-sponsored meeting and sending participants to a meeting sponsored by others if EPA has determined that such travel is necessary or useful and if that determination is consistent with EPA's statutes."

Chapter 57 of title 5 of the United States Code is concerned primarily with the authorization of travel and transportation expenses for Government employees and as a general rule, an agency's appropriation for travel expenses would not be available to support the travel of anyone else. Section 5703(c), quoted *supra*, provides a limited exception for "dollar a year men" who, while not Government employees, are nevertheless serving the Government. Thus, even without considering the prohibition in 31 U.S.C. § 551, there was no authority to use EPA travel funds to pay expenses of persons who were neither Government employees nor "dollar a year men" under the exception provided by section 5703(c).

The relationship between 5 U.S.C. § 5703(c) and 31 U.S.C. § 551 has never been discussed in any of our prior decisions. However, if EPA's contention is valid, then section 551 would be effectively repealed to the extent that a meeting or conference is administratively determined to be related to official agency business. Section 5703(c) originated as section 201(d) of the Independent Offices Appropriation Act, 1946, approved May 3, 1945, ch. 106, 59 Stat. 106, 131. It was enacted as permanent legislation the following year as section 5 of the Administrative Expenses Act of 1946, approved August 2, 1946, ch. 744, 60 Stat. 606, 608.

We have reviewed the legislative histories of both Acts and have found no evidence of any congressional intent to impart to section 5703(c) the scope suggested by EPA. Rather, it is clear from the legislative history--and, in fact, implicit in the statutory language--that this authority applies only to persons performing a direct service for the Government, such as experts, consultants, or other advisors, to permit travel to confer with Government officials in connection with the performance of that service. See Hearings on H.R. 4586 [Administrative Expenses bill] Before the House Committee on Expenditures in the Executive Departments, 79th Cong., 2d Sess. 23-25 (1946); H.R. Rep. No. 2186, 79th Cong., 2d Sess. 5 (1946); S. Rep. No. 1636, 79th Cong., 2d Sess. 5 (1946).

We thus do not believe that section 5703(c) was ever intended to establish the proposition that anyone may be deemed a person

servicing without compensation merely because he or she is attending a meeting or convention, the subject matter of which is related to the official business of some Federal department or agency, nor do we believe the cases cited by EPA support such a conclusion. The subject individuals in 39 Comp. Gen. 55 were members of the Commission on International Rules of Judicial Procedure and were clearly serving the Government because they were appointed to the Commission by the President pursuant to statutory directive. The travel in 27 Comp. Gen. 183 involved persons called by a Government officer to confer upon official business -- the so-called "invitational travel" situation. We believe that being called upon to confer with agency staff on official business is different from attending a meeting or convention in which a department or agency is also interested. In this context, both statutes may be construed and given effect consistently.

For the reasons stated, we do not believe the expenditures involved in our July 15 decision would be authorized under 5 U.S.C. § 5703(c), and therefore affirm our prior decision.

The second request for an opinion, dated November 24, 1975, from the EPA General Counsel concerns the legality of a proposed grant by EPA to the American Law Institute (ALI) to partially fund attendance by law students and practicing environmental lawyers at the sixth annual ALI-ABA-Smithsonian Institution seminar on environmental law to be held in February 1976. The objectives of the ALI seminar are set forth in the following excerpt from ALI's application to EPA for grant funds for the 1975 seminar:

"One of the major purposes of these conferences is to furnish the opportunity for lawyers who represent public interest and other citizen groups to obtain further professional training in their chosen field, as well as to provide exposure by students enrolled in environmental law courses to professionals working in this area. The presence of these public interest, environmental lawyers and law students also adds a public service dimension to the entire conference, inasmuch as many of the regular attendees are from industry or from law firms that represent industries. The presence of the public interest, environmental lawyers and law students is necessary, therefore, not only to stimulate and train these individuals to better quality work in the law, but also to provide industry representatives with the opportunity to meet with those lawyers who are working for public interest and citizen groups."

EPA points out that the grant would be made to ALI in a lump-sum to provide "scholarships" to law students and public interest environmental lawyers selected to attend the seminar. The individual "scholarships" awarded by ALI would then be used by the attendees for transportation, food, and lodging expenses.

EPA has authority to provide training by grant in several statutes. For example, section 103 of the Clean Air Act, as amended, 42 U.S.C. § 1857b (1970), provides in pertinent part:

"(a) The Secretary shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall--

"(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution;

"(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

* * * * *

"(b) In carrying out the provisions of the preceding subsection the Secretary is authorized to--

* * * * *

"(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

"(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of this section;

* * * * *

"(5) provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications; * * *"

There is similar training grant authority in section 104 of the Federal Water Pollution Control Act, 33 U.S.C. § 1254 (Supp. III, 1973), and section 204 of the Solid Waste Disposal Act, 42 U.S.C. § 3253. Thus, EPA clearly is authorized to sponsor training of persons other than Government employees in the areas specified in the various statutes, and to make grants for this purpose. Unlike the situation in our July 15 decision, the environmental law seminar here involved is to be financed by a grant from EPA to ALI. Thus payments for travel, food, and lodging of attendees will be made from grant proceeds rather than as direct expenditures from EPA's travel appropriation.

As the EPA General Counsel points out, we have consistently held that, when Federal grant funds are granted to and accepted by the grantee--

"the expenditure of such funds by the grantee for the purposes and objects for which made are not subject to the various restrictions and limitations imposed by Federal statute or our decisions with respect to the expenditure, by Federal departments and establishments, of appropriated moneys in the absence of a condition of the grant specifically providing to the contrary."

43 Comp. Gen. 697, 699 (1964) and decisions cited. In 43 Comp. Gen. 697, we held that the expenditure of National Science Foundation research grant funds by the grantee for the acquisition or use of aircraft did not contravene the provision of law, now found at 31 U.S.C. § 638a(b) (1970), prohibiting the use of appropriated funds by the non-military agencies for the purchase, maintenance, or operation of aircraft without specific authority, where such expenditure had been administratively determined "to be required for the effective accomplishment of the purpose or objects" of the grant. This principle applies equally here; and it is therefore our view that payment of travel and related expenses under the proposed grant to ALI in the instant case is not prohibited by 31 U.S.C. § 551. Cf. B-83261, February 10, 1949.

B. F. KELLER

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